

SEP 22 1977

IN THE  
**Supreme Court of the United States**

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October Term, 1977.

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No. 77-235

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NEWARK SCHOOL DISTRICT, et al.,

*Petitioner,*

v.

BRENDA EVANS, et al.,

*Respondents.*

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**PETITIONER'S MEMORANDUM IN REPLY TO  
BRIEF IN OPPOSITION TO CERTIORARI.**

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This brief is filed under Rule 24, paragraph 4, in response to the "Brief in Opposition to Certiorari" under the caption *Delaware State Board of Education, et al., v. Brenda Evans, et al.*, No. 77-131. Petitioner has been advised by plaintiffs' counsel that said brief is intended to be responsive to the Petition for Certiorari in *Newark School District v. Brenda Evans, et al.*, No. 77-235 and to petitions for certiorari filed by other local school districts in this case.

**BEST COPY AVAILABLE**

## ARGUMENT.

1. Plaintiffs have misdescribed (at page 4) the discretion vested in the State Board by the Educational Advancement Act. Contrary to plaintiffs' assertion, the Educational Advancement Act did not vest discretion in the State Board, to "reorganize all districts in the state" except Wilmington. The State Board had no power to "reorganize" at all except by consolidation of existing, whole, contiguous districts, and in New Castle County it had no discretion or authority to consolidate Wilmington School District, Newark School District, or Alfred I. DuPont School District with any other school district because of racially neutral limitations on the maximum size of consolidated districts.

2. In footnote six the plaintiffs refer to the "splintering of suburban schools from Wilmington" after *Brown*, but the history of education in New Castle County since *Brown* is a history of school district consolidation. No school district in New Castle County has been "splintered" since *Brown* and blacks have never been isolated by a revision of school district boundaries. Thus, the City of Emporia \* situation never took place in New Castle County, Delaware.

3. The multiplicity of appellants in this cause continues to afford plaintiffs the opportunity to avoid coming to grips with the facts relating particularly to Newark School District. Plaintiffs rely on the unsubstantiated generality of the District Court that school districts in New Castle County were not meaningfully separate and autonomous in 1954, but there is nothing in the record to support this with respect to Newark. Both Wilmington School District, which traces its legislative antecedents to 1837 (9 Del. Laws Ch. 79), and Newark School District,

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\* *Wright v. Council of the City of Emporia*, 407 U. S. 451 (1972).

which traces its legislative antecedents to 1873 (19 Del. Laws Ch. 612), were recognized as autonomous "special school districts" as far back as the school code of 1919 (30 Del. Laws Ch. 157). There is no exhibit and no testimony in the record to support, as to Wilmington and Newark, the District Court's statement that the school districts of New Castle County were not separate and autonomous in 1954. Nor is there any evidence that said school districts have not been separate and autonomous at any time since 1954.

4. Plaintiffs' only attempt in the brief to justify the inclusion of Newark in the remedy is to refer in footnotes 11 and 19 to the District Court's purported justification; "... the effects of the pre-*Brown* segregation to which Newark was a party have not yet been dissipated." But Newark's only involvement in pre-*Brown* segregation disclosed in the record consists of five blacks from Newark who attended the colored high school in Wilmington in 1954-55, a practice which terminated in the following year. The District Court never explained and the plaintiffs make no attempt to identify the undissipated effects of this minimal involvement more than twenty years ago.

5. Plaintiffs referred in footnote 14 to events subsequent to the judgment of the Court of Appeals, namely the opinion and judgment of the District Court dated August 5, 1977. Elsewhere in the brief the plaintiffs offer the subliminal suggestion that the trauma in New Castle County should not engage the attention of this Court because a final pupil assignment plan is not yet in place. But the Order of August 5, 1977, to which the plaintiffs have referred, definitively wipes out the existence of eleven autonomous school districts in New Castle County and replaces them with a single school district under a new Board of Education which is required to submit writ-

ten reports to the District Court every two weeks. The effect of this Order is to foist on New Castle County a school district five times larger than any in the history of Delaware—one which is plainly contrary to the long established preference in this state for small, autonomous districts closely related to local control. This Order is final except that the District Court has stayed the extinction of the eleven school districts and the transfer of authority to the new single school district until the petitions for certiorari in this cause have been acted upon.

6. Plaintiffs also referred in footnote 14 to the District Court's finding that new legislation permitting majority to minority transfers among school districts in New Castle County upon payment of tuition by the sending district to the receiving district is an ineffective remedy because only a small number of blacks have exercised the option. In fact the Wilmington School District records showed that more than a thousand black residents of Wilmington have signified their intention to attend schools in suburban school districts this September under the new statutory provisions. It is undisputed that excess school capacity exists throughout New Castle County, that vigorous efforts have been made to publicize the opportunities available to Wilmington blacks, and that no black resident of Wilmington now need attend a majority black school unless he wishes to do so.

Respectfully submitted,

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